

1301.602-3 Ratification of unauthorized commitments.

(a) Insert clause 1352.201-71, *Ratification Release*, in a contract document under which payment is made for unauthorized commitments after a ratification has been processed.

(b)(1) Unauthorized commitments occur when the Department accepts goods or services in the absence of an enforceable contract entered into by an authorized official. It is the policy of DOC that all acquisitions are to be made only by Government officials having authority to make such acquisitions. Acquisitions made by other than authorized personnel are contrary to Departmental policy and the Department is not bound by any formal or informal type of agreement or contractual commitment which is made by persons who are not delegated contracting authority. Payment for goods or services accepted in the absence of an authorized commitment may be made only through the ratification process. Unauthorized commitments may be considered matters of serious misconduct and may subject the responsible employees to appropriate disciplinary actions.

(2) The delegation of the ratification authority is set forth in CAM 1301.70. All requests for ratification must fully explain the circumstances that gave rise to the unauthorized commitment and detail, if appropriate, any disciplinary action taken with respect to any responsible employee. Ratifications may be approved only if all criteria in FAR 1.602-3 have been met.

1301.602-370 Ratification approval by Procurement Counsel.

Ratifications may not be approved unless the concurrence of Procurement Counsel is obtained.

1301.603 Selection, appointment, and termination of appointment.

1301.603-1 General.

The Department's procurement career management program and system for the selection, appointment, and termination of appointment of contracting officers are described in CAM 1301.6.

1301.603-2 Selection.

In addition to the criteria set forth in FAR 1.603-2, selection of contracting officers shall be based upon Section 4 of CAM 1301.6.

1301.603-3 Appointment.

In addition to the criteria set forth in FAR 1.603-3, appointment of contracting officers shall be based upon Section 4 of CAM 1301.6.

1301.603-4 Termination.

In addition to the criteria set forth in FAR 1.603-4, termination of contracting officers shall be based upon Section 4 of CAM 1301.6.

1301.670 Appointment of contracting officer's representative (COR).

The Department's Contracting Officer's Representative certification program for the nomination, appointment and cancellation of CORs is described in CAM 1301.670.

1301.670-70 Provisions and clauses.

Insert clause 1352.201-72, *Contracting Officer's Representative (COR)*, in all solicitations and contracts where a COR will be appointed.

1301.671 Assignment of program and project managers.

The Department's Program and Project Manager certification program for the assignment and certification of Program and Project Managers is described in CAM 1301.671.

Subpart 1301.7—Determinations and Findings

1301.707 Signatory authority.

Signatory authority for determinations and findings (D&Fs) is specified in the FAR for the associated subject matter unless otherwise noted in CAM 1301.70.

PART 1302—DEFINITIONS OF WORDS AND TERMS

Subpart 1302.1—Definitions

Sec.
1302.101 Definitions.
1302.170 Abbreviations.

AUTHORITY: 41 U.S.C. 414; 48 CFR 1.301-1.304.

SOURCE: 75 FR 10570, Mar. 8, 2010, unless otherwise noted.

Subpart 1302.1—Definitions

1302.101 Definitions.

Accountable Personal Property means all personal property for which responsibility for control is formally assigned to an individual, and official property records are maintained as set forth in DOC PPMM Chapter 4.

Agency Head (or Head of Agency) (HA) means the Secretary of Commerce, except, pursuant to Department Organization Order (DOO) 10-5, *Chief Financial Officer and Assistant Secretary for Administration*, the head of the agency for procurement matters shall be the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA), unless a statute provides that the authority of the Secretary is non-delegable.

Chief Acquisition Officer (CAO) means the Department's executive-level non-career employee designated pursuant to the *Services Acquisition Reform Act* to advise and assist the head of the agency and other agency officials to ensure the mission of the agency is achieved through the management of the agency's acquisition activities. The CFO/ASA has been designated by the Head of the Agency as the Chief Acquisition Officer for the Department of Commerce.

Civilian Agency Acquisition Council (CAAC) means the council that assists the Administrator of General Services in developing and maintaining the Federal Acquisition Regulation (FAR) System by developing or reviewing all proposed changes to the FAR. The Council is comprised of a representative designated by each of several Federal departments and agencies, including the DOC. The CAAC coordinates its activities with the Defense Acquisition Regulations Council (DARC). The CAAC is authorized under 48 CFR 1.2.

Commerce Acquisition Manual (CAM) means non-regulatory uniform policies and procedures for internal operations associated with acquiring supplies and services within the Department that implements and supplements the FAR and CAR.

Commerce Acquisition Regulation (CAR) means uniform acquisition policies and procedures, which implement and supplement the FAR.

Contracting Activity means the operating units identified under the definition of "Operating Units" below. Contracting activities may or may not have authority to operate contracting offices (see definition for *Contracting Office*).

Contracting Office means an office that awards or executes contracts for supplies or services and performs post-award functions. The operating units authorized to operate contracting offices are identified in DAO 208-2.

Contracting Officer means an individual designated authority by the Senior Bureau Procurement Official (BPO) to enter into, administer, and/or terminate contracts and make related determinations and findings. Only those individuals who have been certified as contracting officers, through the issuance of a Certificate of Appointment (Contracting Officer Warrant (SF 1402)), by the BPO in accordance with the requirements and procedures of the CAR and the CAM may exercise the authorities of contracting officers. However, by virtue of their positions, the Head of the Agency, the Procurement Executive, and the Heads of Operating Units are also designated as contracting officers.

Department or Departmental or DOC means the Department of Commerce.

Head of Agency (HA)—see definition for "Agency Head."

Head of Contracting Office (HCO) means those individuals designated by the BPO to head the contracting offices within each operating unit that has designated contracting authority to award and administer contracts. In performing their duties, HCOs are empowered to the full limits of the Department's contracting authority. The HCO must be a procurement professional in the GS-1102 occupational series (or equivalent OPM occupational designation). BPOs will issue each HCO a Contracting Officer Warrant that delegates the authority to enter into, administer, and/or terminate contracts and to make related determinations and findings.

Head of the Contracting Activity (HCA) means, for purposes of delegation of contracting authority, officials who are designated as Heads of Operating Units (those who are assigned by the President or by the Secretary to manage the primary or constituent operating units of the DOC) in orders establishing the respective operating units, with the exception of the Office of the Secretary. Such officials are designated as the HCA for procurements initiated in support of the procurement activities of that operating unit. The Chief Financial Officer and Assistant Secretary for Administration has been designated as the HCA for procurements initiated in support of the programs and activities of the Office of the Secretary and all other Secretarial Offices and Departmental Offices.

Office of Small and Disadvantaged Business Utilization (OSDBU), *The* means the advocacy and advisory office responsible for promoting the use of small, small disadvantaged, 8(a), women-owned, veteran-owned, service-disabled veteran-owned, and HUBZone small businesses within the Department acquisition process.

Office of the Assistant General Counsel for Administration, Employment & Labor Law Division means the Department Legal Office that provides advice and guidance to management regarding employment and labor law issues, including the legal standards for taking adverse and performance-based actions.

Office of the Assistant General Counsel for Administration, Ethics Law and Program Division means the Department Legal Office that provides advice and guidance regarding conflict of interest statutes, ethics regulations, and related laws.

Operating Units are organizational entities outside the Office of the Secretary charged with carrying out specified substantive functions (*i.e.*, programs) of the Department and are identified in DAO 208-2.

Procurement Counsel means, except for the Patent and Trademark Office (PTO), the Office of the Assistant General Counsel for Finance & Litigation, Contract Law Division, the office responsible for providing legal review of applicable contract actions and procurement legal advice to all operating

units, and handling procurement-related litigation. "Procurement Counsel" for all PTO procurement-related actions means Office of General Law.

Procurement Executive (or Senior Procurement Executive (PE)) means the official appointed pursuant to Executive Order 12931 and the Services Acquisition Reform Act of 2003 to carry out the responsibilities identified in both the Executive Order and the Act. The Director for Acquisition Management is the Procurement Executive for the Department of Commerce.

Senior Bureau Procurement Official (BPO) means the senior career procurement official, within each operating unit that has been delegated contracting authority, who is designated as the Senior Bureau Procurement Official. The BPO must be a procurement professional who has both experience and training in the area of Federal procurement and contracting. HCAs may designate one BPO within their organization to carry out the day-to-day functions of managing the contracting activity. BPOs may also serve as the Head of Contracting Office. The Procurement Executive will issue each BPO a Contracting Officer Warrant which delegates the authority to enter into, administer, and/or terminate contracts and to make related determinations and findings.

1302.170 Abbreviations

AIR Additional Item Requirements
 BPO Senior Bureau Procurement Official
 CAAC Civilian Agency Acquisition Council
 CAM Commerce Acquisition Manual
 CAO Chief Acquisition Officer
 CAR Commerce Acquisition Regulation
 CFO/ASA Chief Financial Officer/Assistant Secretary for Administration
 CFR Code of Federal Regulations
 CO Contracting Officer
 COR Contracting Officer's Representative
 DAO Departmental Administrative Order
 DOC Department of Commerce
 DOO Departmental Organizational Order
 D&F Determination and Findings
 EVMS Earned Value Management System
 FAR Federal Acquisition Regulation
 HCA Head of Contracting Activity
 HCO Head of Contracting Office
 IRB Institutional Review Board
 JOFOC Justification for Other than Full and Open Competition
 NIST National Institute of Standards and Technology

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NOAA National Oceanic and Atmospheric Administration
OCI Organizational Conflict of Interest
OCIO Office of the Chief Information Officer
OFPP Office of Federal Procurement Policy
OIG Office of Inspector General
OMB Office of Management and Budget
OS Office of the Secretary
OSDBU Office of Small and Disadvantaged Business Utilization
PE Procurement Executive
PTO Patent and Trademark Office
RFP Request for Proposals
SBA Small Business Administration
OU Operating Unit

PART 1303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1303.1—Safeguards

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1303.101 Standards of conduct.
1303.101-2 Solicitation and acceptance of gratuities by government personnel.
1303.101-3 Agency regulations.
1303.104 Procurement integrity.
1303.104-4 Disclosure, protection and marking of contractor bid or proposal information and source selection information.
1303.104-7 Violations or possible violations.

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting suspected violations of the gratuities clause.
1303.204 Treatment of violations.

Subpart 1303.3—Reports of Suspected Antitrust Violations

1303.303 Reporting suspected antitrust violations.

Subpart 1303.4—Contingent Fees

1303.405 Misrepresentations or violations of the covenant against contingent fees.

Subpart 1303.5—Other Improper Business Practices

1303.502 Subcontractor kickbacks.
1303.502-2 Subcontractor kickbacks.

Subpart 1303.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1303.602 Exceptions.

Subpart 1303.7—Voiding and Rescinding Contracts

1303.704 Policy.

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1303.705 Procedures.

Subpart 1303.8—Limitation on the Payment of Funds To Influence Federal Transactions

1303.804 Policy.
1303.806 Processing suspected violations.

Subpart 1303.9—Whistleblower Protections for Contractor Employees

1303.905 Procedures for investigating complaints.
1303.906 Remedies.

AUTHORITY: 41 U.S.C. 414; 48 CFR 1.301-1.304.

SOURCE: 75 FR 10570, Mar. 8, 2010, unless otherwise noted.

Subpart 1303.1—Safeguards

1303.101 Standards of conduct.

1303.101-2 Solicitation and acceptance of gratuities by government personnel.

(a) Suspected violations of the prohibition on soliciting and accepting gratuities shall be reported to the Office of the Inspector General in accordance with DAO 207-10, *Inspector General Investigations*.

(b) To obtain legal advice regarding the solicitation and acceptance of gratuities, contact the Office of the Assistant General Counsel for Administration, Ethics Law and Program Division.

1303.101-3 Agency regulations.

The Department has issued rules implementing Executive Order 11222 prescribing employee standards of conduct (see DOC Office of General Counsel Web site).

1303.104 Procurement integrity.

1303.104-4 Disclosure, protection and marking of contractor bid or proposal information and source selection information.

Contractor bid or proposal information and source selection information must be protected from unauthorized disclosure in accordance with FAR Parts 3, 14 and 15, and CAM 1315.3.

1303.104-7 Violations or possible violations.

Suspected violations of the Procurement Integrity Act shall be reported to